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No. 80-2049

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN, PETITIONER

v.

JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether an offender convicted of a crime while serving a sentence under the Youth Corrections Act, 18 U.S.C. 5005 *et seq.*, and sentenced to a consecutive term of imprisonment as an adult, must be treated as a YCA offender for the remainder of his YCA sentence.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 642 F.2d 1077. The order of the district court (Pet. App. 18a-20a) and the magistrate's report and recommendation (Pet. App. 21a-29a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 5, 1981 (Pet. App. 16a-17a). The petition for a writ of certiorari was filed on June 3, 1981, and granted on June 22, 1981. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTES INVOLVED

18 U.S.C. 5010(c) and (d) provide:

> (c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.
>
> (d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

18 U.S.C. 5011 provides:

> Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

18 U.S.C. 5015 provides:

> (a) On receipt of the report and recommendations from the classification agency the Director may—
>
> (1) recommend to the Commission that the committed youth offender be released conditionally under supervision; or
>
> (2) allcoate and direct the transfer of the committed youth offender to an agency or institution for treatment; or
>
> (3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.
>
> (b) The Director may transfer at any time a committed youth offender from one agency or institution to any other agency or institution.

STATEMENT

1. The Youth Corrections Act, 18 U.S.C. 5005 *et seq.*, enacted in 1950 (ch. 1115, Section 2, 64 Stat. 1085), was "designed to provide a better method for treating young offenders convicted in federal courts * * *, to rehabilitate them and restore normal behavior patterns" (*Dorszynski* v. *United States*, 418 U.S. 424, 433 (1974)). It established "a system of analysis, treatment, and release" (H.R. Rep. No. 2979, 81st Cong., 2d Sess. 1 (1950)) modeled on the English Borstal system (*Durst* v. *United States*, 434 U.S. 542, 545 (1978); S. Rep. No. 1180, 81st Cong., 1st Sess. 4 (1949); H.R. Rep. No. 2979, *supra*, at 4-7). Under the Act, if a person below the age of 22 is convicted of an offense, the sentencing judge may place him on probation (18 U.S.C. 5010(a)), or, if the offense is punishable by imprisonment, sentence him to the custody of the Attorney General for "treatment and supervision pursuant to" the Act (18

U.S.C. 5010(b), (c)). Alternatively, if "the court * * * find[s] that the youth offender will not derive benefit from treatment" under the Act, it may sentence him as an adult. 18 U.S.C. 5010(d). See *Dorszynski* v. *United States, supra,* 418 U.S. at 436-443.[1]

A commitment under the Act is ordinarily for six years. 18 U.S.C. 5010(b). If an offender has been convicted of a crime for which the maximum adult penalty is more than six years' imprisonment, however, he may be sentenced under the YCA for any period not in excess of the adult maximum if the court "find[s] that [he] may not be able to derive maximum benefit from treatment" within six years. 18 U.S.C. 5010(c).

A committed youth offender is studied by the Bureau of Prisons. 18 U.S.C. 5014. Unless the Director of the Bureau chooses to transfer a committed youth offender to another agency for treatment (see 18 U.S.C. 5015(a)(2), (b)), he is authorized to "order the * * * offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public" (18 U.S.C. 5015(a)(3)). "Treatment" is defined as "corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders." 18 U.S.C. 5006(f). The Act provides for "the segregation of the committed [youth offender], insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates serving traditional criminal sen-

[1] If the judge needs more information on which to base his decision, he may order the offender committed for observation, study, and a report by the Bureau of Prisons. See 18 U.S.C. 5010(e), 5014.

tences." *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434; 18 U.S.C. 5011.

The Director and the Parole Commission consult on a youth offender's release from custody. 18 U.S.C. 5014, 5016, 5017(a). The Commission "may at any time * * * release conditionally under supervision a committed youth offender in accordance with the provisions of [18 U.S.C.] 4206." 18 U.S.C. 5017(a). It must conditionally release an offender from custody no later than two years before the expiration of his sentence. 18 U.S.C. 5017(c), (d).

2. In 1974 respondent, then 17 years old, was convicted of second degree murder in the Superior Court of the District of Columbia.[2] The maximum adult sentence for this offense was life imprisonment; respondent was sentenced to 10 years' custody under the Youth Corrections Act, 18 U.S.C. 5010(c) (Pet. App. 2a, 21a).[3]

In 1975, while respondent was serving the YCA term in the Federal Correctional Institution at Ash-

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[2] Respondent pled guilty to this offense. When we filed our petition for a writ of certiorari, we were incorrectly advised that respondent had been convicted by a jury (Pet. 3).

[3] Respondent was sentenced on May 10, 1974 (Pet. App. 21a). In the District of Columbia at that time, an offender under the age of 22 had a "presumptive right" to be sentenced under the Youth Corrections Act (*United States* v. *Phillips*, 479 F.2d 1200, 1205 (D.C. Cir. 1973)) and was to be sentenced as an adult "only in 'the exceptional case * * *'" (*United States* v. *Coefield*, 476 F.2d 1152, 1157 (D.C. Cir. 1973), quoting *United States* v. *Waters*, 437 F.2d 722, 724 (D.C. Cir. 1970)). These standards were enforced by searching appellate review. See, *e.g.*, *United States* v. *Phillips*, *supra*, 479 F.2d at 1202-1206.

In *Dorszynski* v. *United States*, 418 U.S. 424 (1974), decided in June 1974, the Court rejected this interpretation of the YCA and held that "the discretion vested in a district

land, Kentucky, he was convicted of assaulting a federal correctional officer with a dangerous weapon, in violation of 18 U.S.C. 111 (see Pet. App. 2a, 21a).[4] The district court ordered respondent committed for a study by the Bureau of Prisons under 18 U.S.C. (1970 ed.) 4208(b) (Pet. App. 3a).[5] The court explicitly rejected sentencing under the YCA (Pet. App. 2a-3a), finding that respondent "will not benefit any further under the provisions of" the YCA (Judgment and Commitment Order, May 15, 1975). Upon receiving the Bureau of Prisons report, the court sentenced respondent to an adult term of five and one-half years' imprisonment, to run consecutively to the YCA sentence (Pet. App. 3a). The sentencing court recommended that respondent "be transferred from [the] Federal Youth Center at Ashland, [Kentucky,] to a facility providing greater security" (Judgment and Commitment Order, Sept. 2, 1975).

Respondent was accordingly placed in the Federal Correctional Institution at Oxford, Wisconsin. After a series of disciplinary reports,[6] he was trans-

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judge * * * [to reject YCA sentencing and sentence a youth offender as an adult] is essentially the same as the traditional discretion vested in * * * [a sentencing] court * * *" (*id.* at 442).

[4] We have lodged with the Clerk of this Court copies of the judgment and commitment orders accompanying each of respondent's three convictions.

[5] That statute is now 18 U.S.C. 4205(c). Both provisions specify that such a commitment for study "shall be deemed to be for the maximum sentence of imprisonment prescribed by law * * *." Presumably, it is for this reason that respondent's adult sentence for violating 18 U.S.C. 111 was initially fixed at 10 years' imprisonment (Pet. App. 3a).

[6] We have been advised by the Bureau of Prisons that from the time of his incarceration in July 1974 through July 1980,

ferred to the Federal Correctional Institution at Lompoc, California, where he again attacked a correctional officer. He pled guilty to assault on a federal officer and, in August 1977, was sentenced to an adult term of one year and one day. The sentencing judge specified that this term was to be consecutive to respondent's other sentences (Pet. App. 3a).[7]

3. Bureau of Prisons Policy Statement No. 5215.2 (Dec. 12, 1978), which deals with the custody of offenders sentenced under the YCA, excludes from its scope "any inmate * * * who is * * * also sentenced to a concurrent or consecutive adult term, whether state or federal."[8] After respondent received his adult sentences, the Bureau of Prisons, following this policy, classified respondent as an adult offender and provided him the treatment designed for adult offenders (see page 35 note 19, *infra*). In 1978 respondent, then confined in the United States Penitentiary at Terre Haute, Indiana, filed a pro se document in the United States District Court for the Southern District of Indiana. The document was treated as a petition for a writ of habeas corpus (see

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respondent had been cited in 36 incident reports. Many of his citations are for violent conduct. See Pet. App. 18a-19a, 22a.

[7] At this time, respondent was still eligible for sentencing under the YCA. The order of the district court imposing this sentence contains no explicit finding that respondent would not benefit from a YCA sentence, and the court below stated that no such finding was made (Pet. App. 3a). If there is no such finding, respondent's second adult sentence does not comply with *Dorszynski* v. *United States*, *supra*, 418 U.S. at 443-444. Respondent has not, however, raised this issue in the present litigation.

[8] The Bureau of Prisons interprets this policy not to apply if the adult sentence is for a misdemeanor.

Pet. App. 18a, 21a), presumably under 28 U.S.C. 2241. Respondent claimed that his YCA status entitled him to be moved from a penitentiary to an institution where treatment programs for YCA offenders were available.[9]

While his petition was pending before the district court, respondent was moved to the United States Penitentiary at Marion, Illinois. On the government's motion, the case was transferred to the United States District Court for the Southern District of Illinois.[10] A United States Magistrate in that district

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[9] On its face, respondent's petition challenged only the conditions of his confinement, not the "fact or length of the confinement itself" (*Bell* v. *Wolfish*, 441 U.S. 520, 527 n.6 (1979)). It is unclear whether such a challenge is properly raised by habeas corpus. Compare *Bell* v. *Wolfish*, *supra*, and *Preiser* v. *Rodriguez*, 411 U.S. 475, 499-500 (1973), with *Wilwording* v. *Swenson*, 404 U.S. 249, 251 (1971), and *Johnson* v. *Avery*, 393 U.S. 483 (1969). It appears, however, that the document filed by respondent could have been treated as a complaint seeking either mandamus (see 28 U.S.C. 1361) or an injunction (see 28 U.S.C. 1331(a)), without affecting the substantive standard. See, *e.g.*, *Leonhard* v. *Mitchell*, 473 F.2d 709, 713 (2d Cir.), cert. denied, 412 U.S. 949 (1973) ("[A] writ of mandamus properly is issued when a government official fails to comply with a specific statutory * * * direction."). In addition, it is conceivable that respondent's petition can be read to assert that if he is not classified as a YCA offender he must be released from his YCA sentence. See pages 40-45, *infra*. This claim is properly raised by habeas corpus. *Walker* v. *Wainwright*, 390 U.S. 335 (1968).

[10] The named petitioner in this case, George A. Ralston, was Warden at the Terre Haute institution at the time respondent filed his petition. When respondent's petition was transferred to the Southern District of Illinois, however, the Warden of the Marion penitentiary was apparently not substituted as a party.

Respondent was at Marion, in the Southern District of Illinois, when that district court granted relief on January 7,

recommended that relief be granted and that respondent be "transfer[red] * * * to an institution at

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1980 (Pet. App. 5a, 20a). The government appealed and obtained a stay of the district court's order (Pet. App. 4a). In June 1980, while the appeal was before the Seventh Circuit, respondent was transferred from Marion to the Federal Correctional Institution at Memphis, Tennessee (Pet. App. 5a). The court of appeals apparently was aware of this transfer (see *ibid.*). While the appeal was still pending, respondent was transferred to the Federal Correctional Institution at Butner, North Carolina, for psychiatric care. Bureau of Prisons records indicate that he was received at Butner on August 27, 1980. Respondent's counsel advised the court of appeals of this transfer (Pet. App. 5a n.3), but Warden Ralston remained at all times the named party. At the time this brief is filed, respondent remains at Butner. There is no record that the government obtained the authorization required by Fed. R. App. P. 23 before transferring respondent to Memphis and Butner. Apparently this occurred because the Bureau of Prisons failed to notify the United States Attorney of the transfer, as it is supposed to do under Bureau of Prisons Policy Statement No. 7300.13F ¶ 8(C) (Jan. 27, 1978).

It is well settled that the transfer of a habeas corpus petitioner outside the jurisdiction of the district court after that court has acted, and while the case is on appeal, does not affect the jurisdiction of the court of appeals, even if the transfer is in violation of Fed. R. App. P. 23. See, *e.g.*, *Cohen* v. *United States*, 593 F.2d 766, 767 n.2 (6th Cir. 1979); *Meck* v. *Commanding Officer*, 452 F.2d 758, 761-762 n.11 (3d Cir. 1971); *Hudson* v. *Hardy*, 424 F.2d 854, 856 n.5 (D.C. Cir. 1970); *Schultz* v. *United States*, 373 F.2d 524 (5th Cir. 1967). Petitioner remains in the custody of an official of the United States, and that official will of course comply with the decision of this Court. See *Ex parte Endo*, 323 U.S. 283, 304-306 (1944); *Meck* v. *Commanding Officer*, *supra*, 452 F.2d at 762 n.11. We will supply the Court with the name of the Warden of the Federal Correctional Institution at Butner should the Court deem it appropriate to substitute that person as the named petitioner in this case.

which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011" (Pet. App. 29a). The district court said that it was "wary" and "hesitan[t]" to order respondent treated as a YCA offender (*id.* at 19a, 20a), but it concluded that "Congress has mandated the result which the Magistrate has arrived at" (*id.* at 19a). It therefore adopted the magistrate's report and recommendation (*id.* at 20a).

The court of appeals affirmed (Pet. App. 1a-15a). It held that respondent must be treated as a YCA offender until his original YCA sentence is completed, even though he will then serve two consecutive adult terms. The court assumed *arguendo* that respondent's adult sentences constituted findings that he would no longer benefit from his YCA sentence, but it said that allowing respondent's initial YCA sentence to be affected by a subsequent adult sentence "would necessarily deprive the judge who imposed the [YCA] sentence * * * of his traditional and exclusive sentencing function" (*id.* at 8a).

In reaching this conclusion the court explicitly disagreed with *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980). The facts in *Thompson* parallel those of the present case; a committed youth offender was convicted of murder while serving his YCA sentence, and the court, after finding that he would not benefit from YCA treatment, sentenced him to a consecutive adult sentence of life imprisonment. The Third Circuit held that the offender "can be returned to an adult prisoner population for the remainder of the YCA sentence" (*id.* at 422).[11] The court below, how-

[11] It appears that only one other court of appeals has considered the precise issue presented here. In *Outing* v. *Bell*, 632 F.2d 1144 (4th Cir. 1980), cert. denied, No. 80-6005

ever, following the dissent in *Thompson*, asserted that neither the YCA nor its legislative history suggests that a YCA sentence, once imposed, may be "re-evaluat[ed]" (Pet. App. 6a) by a judge imposing a subsequent sentence on the same offender. The court rejected the government's argument that it would be pointless to provide YCA treatment to an offender who will soon be incarcerated as an adult. It also ruled that the YCA gave the Bureau of Prisons sufficient alternative means of dealing with "a criminally sophisticated YCA offender." In particular, the court suggested, the Bureau could segregate offenders like respondent from both other YCA offenders and other adult offenders (Pet. App. 14a; see *id.* at 19a, 28a-29a). The court concluded that "the Bureau of Prisons does not have the power to determine that a committed youth offender serving a YCA sentence can be treated as an adult prisoner even though he was subsequently sentenced to additional terms as an adult" (*id.* at 14a). It held that respondent "must receive segregation and treatment according to the provisions of the YCA for the duration of his YCA sentence" (*ibid.*).[12]

(Mar. 23, 1981), the Fourth Circuit explicitly upheld the Bureau of Prisons policy at issue in this case. See page 27, *infra*. But see *King* v. *Kenney*, No. TH 79-144-C (S.D. Ind. Oct. 14, 1980), appeal docketed, No. 80-2777 (7th Cir. Dec. 16, 1980).

[12] Respondent will be conditionally released from his YCA sentence, and will begin his first adult sentence, on January 9, 1982. As we explained in our Motion for Expedited Consideration of the Petition for a Writ of Certiorari, this case will become moot if the Court does not decide it before that date. Should the case become moot, we would ask the Court to vacate the judgment of the court of appeals. See *United States* v. *Munsingwear*, 340 U.S. 36, 39 (1950).

Judge Pell concurred in the opinion because he believed that "Congress * * * mandated" continued YCA treatment for offenders like respondent. But he added (Pet. App. 14a-15a):

> The record in this case scarcely indicates that [respondent] was benefitting from YCA treatment. Two federal district judges determined, one explicitly and the other in effect, that [respondent] would receive no benefit from YCA treatment. These determinations would be effective in any event, whenever and however, the YCA period of the sentence was completed. * * * I see, on this record, no indication to think that either [respondent] or society will benefit by continuing the YCA treatment * * *.

SUMMARY OF ARGUMENT

Even though respondent has committed two felonies for which he was sentenced to consecutive terms of imprisonment as an adult, the court of appeals held that he must be treated as a Youth Corrections Act offender and segregated from adult offenders for the remainder of his YCA term. This interpretation of the Youth Corrections Act is not compelled by the statutory language, is inconsistent with the construction placed on the Act by the agency charged with implementing it, and is wholly at odds with the underlying principles of the Act.

A. Nothing in the language of the YCA is specifically directed to the problem of an offender who, while serving a YCA sentence, commits a crime and receives a consecutive term of imprisonment as an adult, thus acquiring a dual status as both an adult offender and a YCA offender. The legislative history reveals that Congress, in its optimism about the new

approach, did not consider or provide for the situation in which a youth offender would commit a serious crime while rehabilitation was underway. Requiring respondent to be classified as a YCA offender is, however, inimical to the underlying principles of the YCA and is contrary to Congress's reasons for enacting the very provisions on which respondent relies. Moreover, Congress placed in the Bureau of Prisons the exclusive responsibility for making judgments about the proper form of treatment and segregation to be provided under the Act. The Bureau's considered judgment about the proper form of treatment and segregation for a class of offenders about whom the Act is silent is, therefore, entitled to great deference, particularly because it is in accord with the policies of the Act.

B. Congress envisioned that, as part of their rehabilitation, YCA offenders would be segregated "insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates * * *." *Dorszynski* v. *United States*, 418 U.S. 424, 434 (1974). The court of appeals' decision requires that respondent be segregated from adult prisoners; in practice, this means that respondent must be confined with YCA offenders. Respondent has committed three violent crimes and has twice been sentenced as an adult. He is 24 years old and has been in custody for seven years. It is difficult to believe that when Congress enacted the YCA—which it intended to reduce the "herding [of] youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and * * * [the] subjecting [of] youth offenders to the evil influences of older criminals" (H.R. Rep. No. 2979, 81st Cong., 2d Sess. 2-3 (1950))—it also intended to require that young offenders be confined with inmates like respondent.

The fortuity that respondent will not begin his adult sentence until January 1982—because he must first complete a sentence imposed for an earlier crime—does not make him any less an experienced, hardened inmate and a bad influence on YCA offenders today.

The courts below suggested that offenders like respondent might be segregated from both other adult offenders and ordinary YCA offenders. But this contrived and artificial categorization of offenders bears no relation to the policies underlying the YCA or any other rational penal system. It would place together, and isolate from all others, those offenders whose rehabilitation had failed so substantially that they committed crimes, and received adult prison terms, while they were still in custody or under supervision. This is far from the healthy institutional environment that Congress sought to provide as an integral aspect of YCA treatment. In addition, segregating the relatively small number of offenders with both adult and YCA sentences from all others will make it impossible to provide these offenders with the wide range of treatment programs now available to both adult and YCA offenders.

In this case, respondent, at the time of the district court's decision, was one of only two inmates serving YCA sentences whose behavior required that they be confined at the most secure institution in the federal system; thus the decision below would have the effect of requiring that he be placed in solitary or near-solitary confinement for as long as he required such high-security custody. This cannot possibly be the result Congress intended when it enacted the YCA. These incongruities reflect the court of appeals' basic misconception: it has attempted to impose rigid categories and requirements on the Bureau of Prisons, when Congress intended to give the Bureau the flexi-

bility it needed to establish a rational system of treatment and security.

C. 1. The courts below also ordered that respondent receive the treatment designed for YCA offenders until he begins his first adult term. But Congress intended YCA treatment for offenders who would be "return[ed] * * * to society as social and rehabilitated citizens" (H.R. Rep. No. 2979, *supra*, at 5). Nothing in the Act or its legislative history suggests that YCA treatment was intended to prepare an offender for an adult prison term; indeed, Congress viewed adult imprisonment as incompatible with YCA treatment.

Moreover, Congress conceived YCA treatment as a continuous process that begins with the custodial phase and continues with a supervised, gradual reintegration into society. Both phases, in Congress's view, were integral to YCA treatment. The court of appeals in effect ordered that respondent receive the custodial phase of YCA treatment followed not by supervised release but by adult custody. This regimen has no support in the underlying principles of the YCA or of any other statute. There is no reason to believe that, in Congress's view, such a regimen would tend to rehabilitate an offender, and there is no basis for preferring it over the treatment respondent will receive as an adult.

2. Contrary to the court of appeals, this case does not involve an effort to reevaluate or alter respondent's YCA sentence, or to invade the province of the judge who imposed that sentence. Respondent's sentence entitles him to segregation and treatment to the extent—and only to the extent—that the YCA, explicitly or implicitly, provides that he shall receive such segregation and treatment. The underlying principles of the YCA make it clear that respondent

is not entitled to be segregated from adult offenders or to be provided the custodial phase of YCA treatment in the period before he begins adult custody. Speculation about what the different sentencing judges might have intended, or about what course of treatment might benefit respondent, is simply beside the point.

3. Because of its concern with the sentencing prerogatives of the judge who imposed the YCA sentence, the court of appeals overlooked another significant premise of the YCA. The legislative history and the Act itself make clear Congress's intention that decisions about the treatment of an offender should be made in light of all available information about the offender. Since he received his YCA sentence, respondent has demonstrated, to the satisfaction of two sentencing judges, that he will not benefit from YCA treatment. Indeed, respondent has proven to be an adult recidivist—precisely the kind of offender for whom YCA treatment was *not* intended. None of this information, of course, was known to the judge who imposed the YCA sentence. The Act's emphasis on fully informed sentencing makes it clear that respondent's conditions of confinement should be governed by the later determinations.

4. Finally, respondent cannot claim that it is somehow unfair or improper to require him to continue his YCA sentence when he will not receive YCA treatment. It is respondent's own acts that have made it impossible for him to receive further YCA treatment of the sort Congress envisioned, because the gradual reintegration of an offender into society is an essential part of that treatment. The fact that respondent has made further YCA treatment impossible does not make it improper to require him to serve the remainder of his YCA sentence.

Respondent received his 10-year YCA sentence under 18 U.S.C. 5010(c), which authorizes a YCA sentence of any number of years greater than six but not in excess of the maximum term of imprisonment that could be imposed on an adult guilty of the same offense. The legislative history and the structure of the YCA demonstrate that the purpose of a sentence imposed under Section 5010(c) is to keep an offender in custody for the entire period of the sentence—in order to protect the public and the interests of law enforcement—if rehabilitation should fail. Respondent's two convictions and adult sentences are excellent evidence that in his case rehabilitation has failed. Moreover, as we have explained, respondent has made further YCA treatment impossible. Under these circumstances, Congress intended that he complete his YCA sentence in order to protect the public and the interests of law enforcement; thus respondent cannot claim that his treatment as an adult offender for the remainder of that sentence deprives him of anything to which he is by law entitled as a condition of the imprisonment.

ARGUMENT

AN OFFENDER WHO COMMITS A CRIME WHILE SERVING A SENTENCE UNDER THE YOUTH CORRECTIONS ACT AND IS SENTENCED TO A CONSECUTIVE TERM OF IMPRISONMENT AS AN ADULT MAY BE TREATED AS AN ADULT OFFENDER

A. Introduction

While serving a sentence under the Youth Corrections Act, respondent committed two felonies and was twice sentenced to consecutive terms of imprisonment as an adult. The courts below held that the Bureau of Prisons must nonetheless continue to classify respondent as a YCA offender and must, for

the duration of his YCA term, segregate him from adult offenders and provide him the treatment designed for YCA offenders. The district court and one member of the court of appeals panel acknowledged that this result made little sense, but they apparently believed that the YCA mandated it (see Pet. App. 14a-15a, 18a-20a).

Neither the district court nor the court of appeals, however, identified the language in the YCA that supposedly compels this result. While the YCA provides that an offender sentenced under the Act "shall undergo treatment * * * [and] [i]nsofar as practical * * * shall be segregated from other offenders * * *" (18 U.S.C. 5011), no provision of the Act prescribes the proper classification of an offender like respondent, who, as we will show, is an adult offender in every sense relevant to the YCA, but who is completing a sentence imposed under the YCA. Indeed, the legislative history makes it clear that Congress did not specifically address the problem presented by such offenders. But the principles underlying the YCA and the design for rehabilitation that it created permit only one conclusion—that Congress did not require offenders like respondent to be treated as ordinary YCA offenders.

1. The Congress that enacted the YCA was greatly concerned with recidivism among young offenders, but it saw this exclusively as a problem among "those released from our reformatories and penal institutions * * *." H.R. Rep. No. 2979, 81st Cong., 2d Sess. 2 (1950); see, *e.g.*, S. Rep. No. 1180, 81st Cong., 1st Sess. 6-7 (1949); *Federal Corrections Act and Improvement in Parole: Hearings on H.R. 2139 and H.R. 2140 Before Subcomm. No. 3 of the House Comm. on the Judiciary*, 78th Cong., 1st Sess. 38-39 (1943) (hereinafter *1943 House Hearings*). Con-

gress apparently accepted the view of the Act's drafters that the YCA could prevent such recidivism—which is of course far more likely to occur than crimes committed while an offender is serving a sentence—among the overwhelming majority of young offenders.[13]

While such an optimistic attitude may seem unwarranted in light of subsequent experience, Congress apparently saw no need to concern itself with the possibility that a YCA offender would commit even a relatively minor crime while serving his YCA term. In the committee reports and floor debates on the YCA, there appears to be only one reference to the possibility that a YCA offender might commit a crime while serving a YCA sentence; in its discussion of unwalled institutions in the Borstal system, the House report remarked that of 600 inmates "only six * * *

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[13] For example, Congress was informed that graduates of the English Borstal system had a very low rate of recidivism. See H.R. Rep. No. 2979, *supra*, at 6-7. The House committee believed that the YCA would be "a milestone in the movement toward [the] goal" of rehabilitating nearly all young offenders. *Id.* at 10. The Senate committee approvingly quoted the statement of one of the Act's drafters: "[I]f this is enacted, we will have taken one of the most forthright and powerful steps in the furtherance of criminal justice that has been taken since our nation has been founded." S. Rep. No. 1180, *supra*, at 9, quoting *Correctional System for Youth Offenders: Hearings on S. 1114 and S. 2609 Before a Subcomm. of the Senate Comm. on the Judiciary*, 81st Cong., 1st Sess. 21 (1949) (hereinafter *1949 Hearings*) (statement of Judge Laws). The then Director of the Bureau of Prisons described to a Senate committee "probably the most vicious killer that this country has ever known" about whom he said, "if we had been able to reach him when he was young under the provisions of this bill [the proposed YCA], and keep him out of those jails and do something constructive for him, we would have saved him and saved many lives." *1949 Hearings, supra*, at 26-27.

absconded. Of these six, not one committed any offense while at large" (H.R. Rep. No. 2979, *supra*, at 6). This passage was obviously intended to show the success of the Borstal system, not to raise the question of YCA offenders who commit crimes while serving their sentences.[14] So far as we can determine, none of the witnesses in the hearings held on the YCA addressed himself to what should be done in the case of a YCA offender who commits a crime while serving his sentence. See *Correctional System for Youth Offenders: Hearings on S. 1114 and S. 2609 Before a Subcomm. of the Senate Comm. on the Judiciary*, 81st Cong., 1st Sess. (1949) (hereinafter *1949 Hearings*); *Federal Corrections Act: Hearing on S. 895 Before a Subcomm. of the Senate Comm. on the Judiciary*, 78th Cong., 1st Sess. (1943) (hereinafter *1943 Senate Hearings*); *1943 House Hearings, supra.*

It is not entirely surprising that the optimism of Congress and the Act's drafters about the new approach would cause them to overlook the potential problems presented by offenders like respondent. An offender's commission of a felony while under a YCA sentence reflects not just an ultimate failure of re-

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[14] Congress did explicitly provide that YCA offenders may be placed in maximum security institutions. 18 U.S.C. 5011; see 18 U.S.C. 5015(a)(3). But there is no indication that Congress did so in order to deal with the problem of offenders who receive adult sentences for felonies they commit while serving their YCA sentences. Instead, consistently with its concern for rehabilitation, Congress apparently intended maximum security custody for offenders who were less amenable to rehabilitative treatment. See, *e.g.*, *1949 Hearings, supra*, at 19 (statement of Judge Laws) (maximum security for " 'dead-end kids' and rough ones"); *1943 House Hearings, supra*, at 67 (statement of Judge Laws) ("[T]he boys [who] are villains and * * * have had [a] bad background * * * need maximum restrictions.").

habilitation—which was expected to occur only infrequently—but the sentencing judge's error in ordering YCA treatment for an offender who would not benefit from it (see 18 U.S.C. 5010(d)); the correctional authorities' inability either to identify or to cure the offender's propensities (see 18 U.S.C. 5011, 5014, 5015, 5016); and either the offender's proving uncontrollable even while in custody, in the case of a felony committed in an institution, or the Parole Commission's mistaken release of an unrehabilitated offender. Congress appears simply not to have anticipated, or attempted to provide for, such a series of events in which the Act did not function as intended.

2. When faced with an issue that Congress never specifically addresed, the Court must "carry into execution the will of the Legislature" by interpreting the statute in a way consistent with "the objects and policy of the law." *Kokoszka* v. *Belford*, 417 U.S. 642, 650 (1974), quoting *Brown* v. *Duchesne*, 60 U.S. (19 How.) 183, 194 (1857); see *Richards* v. *United States*, 369 U.S. 1, 11 (1962). As we will show, the court of appeals' requirement that respondent be segregated and treated as an ordinary YCA offender is fundamentally inconsistent with the policies and purposes of the YCA. Congress preferred that YCA offenders be segregated from adults; but the reasons for its preference dictate that respondent be treated as an adult and that the Bureau of Prisons not be required to place him with ordinary YCA offenders. Similarly, it is integral to the treatment program Congress envisioned that an offender be returned to society at the end of his YCA commitment. Congress never intended YCA treatment for an offender who would be released from his YCA sentence not to society but to a term of imprisonment as an adult.

Moreover, where, as here, an administrative body charged with executing the statute has drawn on its special competence and interpreted the statute in a way consistent with the statute's underlying principles, that interpretation is entitled to great deference. While the court of appeals was correct in stating that the sentencing judge alone decides whether a defendant will be sentenced as an adult or as a YCA offender (Pet. App. 13a-14a), the issue here concerns an offender who has had both a YCA and an adult sentence imposed on him. Especially because this issue was never specifically considered by Congress, the " 'construction of [the] statute by those charged with its execution should be followed unless there are compelling indications that it is wrong * * *.' " *E.I. du Pont de Nemours & Co.* v. *Collins*, 432 U.S. 46, 54-55 (1977), quoting *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 381 (1969).

The Bureau of Prisons' decision to classify respondent as an adult offender was made pursuant to an established policy. See Bureau of Prisons Policy Statement No. 5215.2 (Dec. 12, 1978); Bureau of Prisons Policy Statement No. 7300.136 (June 1, 1978).[15] This administrative interpretation is en-

[15] At one time, the Bureau of Prisons segregated offenders on the basis of age, treatment needs, and security needs, but not specifically on the basis of whether they were serving YCA sentences. See Policy Statement No. 7300.136, *supra*, ¶ 1. The effect of this policy was that young offenders serving adult sentences who could be confined in low security facilities, or who had particular treatment needs, might be confined with YCA offenders and given access to the same treatment programs. By contrast, YCA offenders who were particularly dangerous or likely to escape would be confined in maximum security institutions.

The Bureau of Prisons' policy was challenged in court, generally by YCA offenders in maximum security institutions.

titled to unusually great deference, not only because it involves "considerations * * * peculiarly within the province and professional expertise of corrections officials * * *" (*Pell* v. *Procunier*, 417 U.S. 817, 827 (1974)), but because it is based on the sorts of judgments that Congress specifically entrusted to the Bureau of Prisons when it enacted the YCA. The courts below held that respondent must receive treatment and segregation under 18 U.S.C. 5011 for the remainder of his YCA term; under the YCA "[t]he Bureau * * * retain[s] full control over the youth offender['s] * * * treatment" (S. Rep. No. 1180, *supra*, at 2). The Director of the Bureau of Prisons determines whether an offender will be transferred to a particular agency or institution (18 U.S.C. 5013, 5015(a)(2), (b)), determines the extent to which segregation is practical (18 U.S.C. 5011), and may "order [a] committed youth offender confined and afforded treatment *under such conditions as he believes best designed* for the protection of the public"

Although there was disagreement among the circuits (compare *Abernathy* v. *United States*, 418 F.2d 288, 289 (5th Cir. 1969) with *Harvin* v. *United States*, 445 F.2d 675, 679-681 (D.C. Cir.), cert. denied, 404 U.S. 943 (1971)), the Bureau of Prisons, after the decision in *Brown* v. *Carlson*, 431 F. Supp. 755 (W.D. Wis. 1977), established special YCA units, housing only YCA offenders, at 20 institutions. See Policy Statement No. 7300.136, *supra*, ¶ 4A, D. These units were staffed with additional counselors, and the inmates in them were given access to additional programs, particularly involving counseling, therapy, and education. Litigation continues over whether these programs afford a sufficient degree of segregation. See page 25 note 16, *infra*.

The new policy forced the Bureau to define strictly the classes of YCA offenders and adult offenders. The result was the classification at issue here.

(18 U.S.C. 5015(a)(3); emphasis added). In view of these responsibilities assigned to the Director by Congress, the Court should give great weight to the Director's decision about the appropriate form of treatment and segregation for a class of offenders about whom the Act itself is silent. See *Bell* v. *Wolfish*, 441 U.S. 520, 548 (1979) ("[P]rison administrators may be 'experts' * * * by Act of Congress * * *."). Significantly, in the Borstal system, on which the YCA was modeled, correctional authorities could transfer an offender from a Borstal institution to an adult prison whenever they thought it appropriate to do so. See *Report to the Judicial Conference of the Committee on Punishment for Crime* 56 (1942) (hereinafter *Judicial Conference Report*). Here, the Director seeks to exercise a similar authority in accordance with an articulated policy.

In any event, not only are there no "compelling indications" that the Bureau of Prisons policy is incorrect; that policy is fully in accord with the principles underlying the Act. Conversely, neither the requirement that respondent be segregated from adult offenders nor the requirement that he receive treatment as prescribed in the YCA (see Pet. App. 14a, 20a) is consistent with those principles.

B. Respondent Is Not Entitled To Be Segregated From Adult Offenders

The court of appeals held that YCA offenders with consecutive adult sentences must be segregated from other adult offenders. Unless the YCA is interpreted to require such offenders to be placed in a separate category, segregated from both ordinary YCA offenders and ordinary adult offenders—a contrived interpretation which, as we will show, is wholly impractical and undesirable—the result of the court of appeals' decision is to require offenders like respond-

ent to be mingled with ordinary YCA offenders. Congress could not have intended this result.

1. This Court has said that "[a]n integral part of the treatment program" prescribed by the YCA is "the segregation of" offenders committed under the Act, "insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates serving traditional criminal sentences." *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434. The House sponsor of the bill that became the YCA explained that it was premised on "[t]he advisability of segregating youthful first offenders from hardened adult criminals * * *" (96 Cong. Rec. 15036 (1950)).[16]

[16] Congress's preference for segregation is not, of course, an inflexible mandate. Congress recognized that segregation may sometimes interfere with efforts to treat YCA offenders, or may otherwise be excessively costly; it gave the Bureau the flexibility to accommodate these conflicting needs by requiring segregation only "[i]nsofar as practical" (18 U.S.C. 5011). Even courts that emphasize the importance of segregation recognize that exceptions must be made. See, *e.g.*, *Brown* v. *Carlson*, 431 F. Supp. 755, 773 (W.D. Wis. 1977).

In the 30 years since the YCA was enacted, the Bureau of Prisons has adapted its policies on the segregation of young offenders to take account of changes in the nature and size of the YCA population in prisons and the more diverse range of treatment programs that has become available to both YCA and adult offenders. The Bureau's current policy is to segregate YCA offenders' living quarters from those of adult offenders, and to segregate some but not all programs, within institutions containing both YCA and adult offenders. (There are certain exceptions to this policy, notably in maximum security institutions. There were only 28 YCA inmates in maximum security custody at the end of June 1981. Even if they were all confined in one institution—a course which would, in the Bureau's judgment, interfere with both treatment and security—it would not be practical to segregate such a small number of offenders.)

The principal reason for maintaining mixed populations in institutions is that the number of YCA offenders is relatively

Respondent, who is now 24 years old, has received adult sentences for two violent crimes. In one instance the sentencing judge expressly determined that respondent would not benefit from a YCA sentence; in the other, such a determination was implicit in the judge's decision to impose an adult sentence. Respondent has been incarcerated since he was 17, and the sentences he is now serving will not expire until he is 31. He has an extensive disciplinary record of violent incidents. It is difficult to believe that when Congress enacted the YCA—which it intended to reduce the "herding [of] youth with maturity, the

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small and declining; establishing institutions with only YCA offenders would move many offenders far from their homes, thus weakening their ties to their families—ties that are important to rehabilitation. The principal reason for integrating programs is that more programs, and programs better suited to inmates' needs, can be provided if the Bureau need not duplicate every program by providing identical but separate sessions for adult and YCA offenders. Because this policy does not totally segregate adult and YCA offenders, it will occasionally permit a YCA offender with a consecutive adult sentence to mingle with ordinary YCA offenders, although the Bureau would seldom allow an offender with an extensive record of violent conduct comparable to respondent's to have substantial contact with ordinary YCA offenders.

A panel of the Tenth Circuit recently held that the Bureau's current YCA policy enforces too little segregation. See *Watts* v. *Hadden*, No. 80-1384 (10th Cir. June 11, 1981). Whatever the merits of the Bureau's policy, however, the effect of the court of appeals' ruling is to *require* respondent to be mingled with ordinary YCA offenders—not merely to permit it in instances when his segregation from other YCA offenders is impractical or detrimental to treatment. For the reasons we give in text, Congress could not have intended to impose such a requirement.

novice with the sophisticate, the impressionable with the hardened, and * * * [the] subjecting [of] youth offenders to the evil influences of older criminals" (H.R. Rep. No. 2979, *supra*, at 2-3; see 96 Cong. Rec. 15036 (1950))—it also intended to require that young offenders be confined with inmates like respondent.

Moreover, confining respondent with YCA offenders is plainly no more appropriate now than it will be in January 1982, when respondent begins his first adult sentence; and there can be no dispute that at that time respondent will have to be segregated from YCA offenders to the extent it is practical to do so. As the Fourth Circuit said in *Outing* v. *Bell*, 632 F.2d 1144, 1146 (1980), cert. denied, No. 80-6005 (Mar. 23, 1981), "[j]ust because [an offender with a consecutive adult sentence] had a previous YCA sentence does not make him any the less an adult offender." In holding that the Bureau of Prisons policy at issue in this case conformed to the YCA and promoted its objectives, the Fourth Circuit correctly observed that allowing a YCA offender with a consecutive adult sentence to retain his YCA status would be "contrary to the purposes of the Act" and that confining such an offender with ordinary YCA offenders "would be inconsistent * * * with the intent of the statute * * *" (*ibid.*).

2. The court of appeals offered no rationale justifying the mingling of offenders like respondent with ordinary YCA offenders. Instead, the court cited the Bureau of Prisons authority to segregate "classes of committed youth offenders * * * according to their needs for treatment" and to place some in maximum security facilities (18 U.S.C. 5011); from this the court concluded, in effect, that if offenders like respondent cannot be confined with other YCA of-

fenders they should be segregated from both ordinary YCA offenders and ordinary adult offenders (see Pet. App. 13a-14a).

This, too, is a result that Congress could not have intended. Some YCA offenders are relatively sophisticated, and some are prone to escape or to present other disciplinary problems. For these reasons, Congress recognized that the Bureau of Prisons must have the authority to segregate subclasses of YCA offenders, and occasionally to use maximum security facilities. See page 20 note 14, *supra*.[17] But the court of appeals' suggestion that YCA offenders with consecutive adult sentences should be segregated from all other categories exalts form over substance and is inconsistent with the purposes of the Act in a variety of ways, producing results that Congress plainly could not have intended.

First, Congress intended a YCA offender's contact with his fellows to be a significant aspect of the rehabilitative program. The drafters of the YCA

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[17] Even though the Act plainly authorizes the Bureau of Prisons to confine YCA offenders in maximum security facilities (18 U.S.C. 5011; see 18 U.S.C. 5015(a)(3); page 20 note 14, *supra*), some courts have limited the Bureau's authority to do so. See *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107 (3d Cir. 1978); *Harvin* v. *United States*, 445 F.2d 675, 679-681 (D.C. Cir.), cert. denied, 404 U.S. 943 (1971); but see *Abernathy* v. *United States*, 418 F.2d 288, 289 (5th Cir. 1969). We disagree with these restrictions on the Bureau's authority. The language of the statute is explicit, and nothing in the legislative history suggests that Congress intended to deny the Bureau of Prisons the authority to confine inmates presenting serious security problems in suitable institutions. In this particular case, for example, we believe that even if respondent prevails on his claim that he should be classified as a youth offender, his institutional record would still justify his confinement in a maximum security institution.

saw "normal contacts" (H.R. Rep. No. 2979, *supra*, at 3) and "experience in living with their fellows under supervision and under more wholesome conditions than are possible in the usual prisons" (*Judicial Conference Report, supra*, at 2) as central elements of the treatment program. One of the drafters of the Act explained to the Senate committee that young offenders were to be segregated from each other in ways "advantageous to their reformation." *1943 Senate Hearings, supra*, at 12 (statement of Judge Parker). The court of appeals would confine together—and isolate from all other offenders—those inmates who committed serious crimes while efforts were being made to rehabilitate them, and who were, in cases like respondent's, found by sentencing judges not likely to benefit from further treatment. These are neither "normal contacts" nor "wholesome conditions" that further rehabilitation; plainly confinement of this sort bears no resemblance to the YCA treatment Congress intended, and there is no justification for interpreting the Act to require it.

Even apart from the specific concerns of the YCA, segregating offenders like respondent from all others is an artificial classification unrelated to rehabilitation or other penological objectives. Ordinarily, in dealing with both the YCA and adult populations, the Bureau of Prisons assigns offenders to institutions on the basis of such factors as their particular needs for treatment, training, or education, the location of their homes, and considerations of security; the Bureau has found, for example, that an offender's rehabilitation will often be substantially aided if he receives frequent visits from his family. If offenders like respondent must be segregated from all others, these objectives will be compromised, yet no other valid goals will be promoted. Many offenders like

respondent will be excluded from the institutions and programs that best suit their needs because at those institutions, and in those programs, it will not be possible to segregate them from both other YCA offenders and other adult offenders. See page 25 note 16, *supra*. Thus the almost certain result of adopting the court of appeals' suggestion would be to give offenders like respondent fewer opportunities for treatment and rehabilitation than even adult prisoners have. See 18 U.S.C. 4081.

The incongruity of the court of appeals' approach is particularly clear in this case. At the time the district court ordered relief, respondent was one of two offenders serving YCA sentences whose records required that they be confined in the United States Penitentiary at Marion, Illinois, the only federal prison at security level 6—the highest maximum security level in the federal system. Respondent cannot reasonably claim that level 6 confinement was unwarranted in his case. In these circumstances, the order that respondent be segregated from adult inmates would have required placing him in near-solitary confinement that permitted contact with only the single other inmate serving a YCA sentence at that institution; and unless that inmate had also received a subsequent adult sentence, the court of appeals' approach would have required respondent to be placed in strictly solitary confinement.[18] Such an

[18] The district court, which unlike the court of appeals addressed itself to the specific conditions of respondent's custody, effectively required that respondent's contacts with all other inmates be severely limited in this way, unless respondent was to be moved to a less secure institution. At the time of the district court's decision, respondent was confined in the control unit at Marion; "[a]ccess to other sections of the institution [from the control unit] is strictly limited and in-

interpretation of the YCA furthers the interests of neither the offender nor the correctional system, and Congress could not have intended it.

These difficulties with the court of appeals' approach reflect an even more fundamental weakness. Unless the courts are to ignore Congress's obvious intention that, insofar as practical, offenders like respondent not be mingled with ordinary YCA offenders, the decision that respondent must be classified as a YCA offender necessarily interprets the statute to require that the small group of YCA offenders with consecutive adult sentences be segregated from all other classes. But under the YCA, as under the statutes governing adult prisoners (see 18 U.S.C. 4082; *Moody* v. *Daggett*, 429 U.S. 78, 88 n.9 (1976)), the Bureau of Prisons—not Congress or the courts—defines the subcategories of offenders who will be segregated from others. The Director of the Bureau of Prisons is specifically empowered to "allocate and direct the transfer of the committed youth offender to an agency or institution for treatment * * * [or] order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for

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mates of this unit are required to remain in their cells when not * * * involved in designated prison programs" (Pet. App. 25a). The district court, adopting the magistrate's opinion, nevertheless ruled that respondent was insufficiently segregated because there were 16 other cells in the control unit, respondent was "privy to the activity in the adjacent cells," and respondent came in contact with adult offenders while participating in the prison's industrial work program, apparently his only activity (Pet. App. 20a, 22a, 25a). Thus, in order to comply with the lower courts' interpretation of the YCA while retaining respondent in level 6 custody, it apparently would have been necessary to bar respondent from all prison activities and to allow him to be "privy" only to the activities in the cell of, at most, one other inmate.

the protection of the public." 18 U.S.C. 5015(a)(2), (3). One of the drafters of the Act explained: "All responsibility for administering the Federal diagnostic and correctional facilities remains in the Director of the Bureau of Prisons * * *." *1949 Hearings, supra*, at 13 (statement of Judge Laws). See S. Rep. No. 1180, *supra*, at 2 ("The Bureau w[ill] retain full control over the youth offender and his treatment * * *."). Indeed, as we have said, in the Borstal system, correctional authorities had discretion to transfer young offenders to adult prisons. *Judicial Conference Report, supra*, at 56.

The court of appeals' approach effectively forces the Bureau of Prisons to segregate a particular subcategory of offenders from all others, despite the Bureau's determination that such segregation is not appropriate because it will interfere with rehabilitation and other goals, and in the face of Congress's clear intention to leave such decisions to the Bureau. This unacceptable result—or the equally unacceptable result of mingling offenders like respondent with ordinary YCA offenders—can be avoided only by permitting the Bureau to treat an offender who has received an adult sentence as an adult offender, even if he is serving a previously imposed YCA sentence.

C. Respondent Is Not Entitled To YCA Treatment

Even though respondent will enter adult custody as soon as his YCA sentence is completed, the court of appeals ordered that respondent "must receive * * * treatment according to the provisions of the YCA for the duration of his YCA sentence" (Pet. App. 14a). But YCA treatment, as Congress envisioned it, is a continuous process that begins with a custodial phase and continues with a supervised release that gradually reintegrates the offender into

the community. Congress intended that the custodial phase be designed with the supervised release in mind; and Congress saw the supervised release as completing the rehabilitative process begun during the custodial phase. Moreover, the purpose of this course of treatment was to prepare an offender for his return to society as a productive citizen, not to prepare him for adult custody.

Consequently, there is no basis in the YCA for the order issued by the court of appeals—that an offender be afforded the custodial phase of YCA treatment—when that treatment will be followed not by gradual, supervised reintegration into society but by a term of adult imprisonment. Nothing in the YCA suggests that the custodial phase of YCA treatment will prepare an offender for adult custody; indeed, to the extent that custodial YCA treatment is oriented toward an offender's return to society, it may be worse preparation for a lengthy period of adult confinement than adult treatment would be. Similarly, nothing in the YCA suggests a congressional judgment that an offender will be rehabilitated by custodial YCA treatment followed not by a gradual reintegration into society but by adult imprisonment.

1. It is clear from both the Act and its legislative history that the YCA program of treatment "contemplat[es] * * * [an offender's] return to the community as a useful citizen." (*Brisco* v. *United States*, 368 F.2d 214, 215 (3d Cir. 1966)) with his "antisocial tendencies" "correct[ed]" (18 U.S.C. 5006(f)). YCA treatment is designed to "effect rehabilitation and restore normality" so that the offender can be "return[ed] * * * to society as [a] social and rehabilitated citizen[]." H.R. Rep. No. 2979, *supra*, at 3, 5. As this Court has said, the purpose of YCA treatment is "to rehabilitate * * * [the offender] and restore

normal behavior patterns." *Dorszynski* v. *United States*, *supra*, 418 U.S. at 433.

Moreover, Congress viewed an offender's gradual and carefully supervised reintegration into the community as an integral part of YCA treatment. The Court has noted that the "careful and flexible control of * * * supervised release" is one of the "essential" aspects of YCA treatment. *Durst* v. *United States*, 434 U.S. 542, 545-546 & n.7 (1978). The House report accompanying the Act described it as "a system of analysis, treatment, and release" (H.R. Rep. No. 2979, *supra*, at 1), and one of the drafters of the Act explained that it was intended to provide "integration * * * [and] close coordination * * * in * * * placing the diagnostic and treatment procedures together with the placement in society—all of which is of course a continuous step" (*1949 Hearings*, *supra*, at 76). The Act provides that at any time after sentencing, the Parole Commission may release a youth offender "conditionally * * * under the supervision of United States probation officers [or] supervisory agents * * *." 18 U.S.C. 5017(a), 5019. The conditional release program used by the English Borstals, which Congress and the drafters of the YCA used as a model, involved "a close connection between the parole organization and the institution from which the [offender] is to be released," frequent meetings before release between the offender and parole supervisor, "definite plans * * * for [the offender's] return to the community under supervision," and then "individualized parole attention which follows the [offender] after his release" and "assist[s] him in readjusting himself to civilian life." H.R. Rep. No. 2979, *supra*, at 6. One of the authors of the YCA explained that the Act "makes it possible to diagnose the prisoner, establish a program to meet his needs,

and allow him a trial period in the community * * *." *1949 Hearings*, *supra*, at 27 (statement of James V. Bennett, Director of the Bureau of Prisons), quoted in S. Rep. No. 1180, *supra*, at 8. Another told a congressional committee, "[w]e do not want to turn him out without supervision; that is the first provision." *1949 Hearings*, *supra*, at 15 (statement of Judge Laws).

Respondent, however, will not be gradually reintegrated into society under supervision. He will not be returned to society at all when his YCA sentence is completed. Instead, he will immediately begin two adult sentences totalling over six years. Moreover, by expressly rejecting the Third Circuit's decision in *Thompson* v. *Carlson*, *supra*—where the YCA offender was sentenced to a consecutive adult term of life imprisonment—the court below made it clear that its decision would have been the same even if respondent were under an adult sentence of life imprisonment. Nothing in the text or history of the Act suggests that YCA treatment was prescribed to help an offender prepare for life in prison.

In addition, there is no reason to believe that Congress intended any offender to receive only the custodial aspects of YCA treatment, without the supervised conditional release. Under the Bureau of Prisons policy, offenders like respondent receive treatment as adults pursuant to 18 U.S.C. 4081 and the programs of the Bureau of Prisons.[19] No statute

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[19] Respondent is now receiving psychiatric care in the Federal Correctional Institution at Butner, North Carolina. Educational programs, psychological services, drug abuse programs, alcohol treatment facilities, marriage and family counseling, vocational training, employment in prison industries, work release programs, medical, dental, and optical services, and chaplaincy services are also available to adult offenders

reflects a congressional judgment that a truncated and distorted version of YCA treatment, lacking the gradual and supervised return to society that Congress thought was central to the program, would be more beneficial for an offender than treatment as an adult.

The court of appeals (Pet. App. 11a-12a), following the dissenting judge in *Thompson* v. *Carlson* (see 624 F.2d at 428), suggested that respondent must be allowed to continue in the YCA program because the benefits of custodial YCA treatment may persist through his adult confinement until his ultimate release. Of course, this is simply speculation; it is at least as likely that treatment designed to culminate in a release to society will set back an offender's rehabilitation when, at the end of the treatment, he is incarcerated as an adult instead of being released. But even if the court of appeals' speculation is correct, the possibility that an offender with a consecutive adult sentence might gain certain incidental benefits from some aspect of the YCA program does not establish that he is entitled to YCA treatment. Nearly all offenders, no matter what their age or how "incorrigible" they are, might gain some such incidental benefit.[20] The issue is whether Congress intended to require that the YCA program be offered as preparation for adult custody to offenders who would not be reintegrated into society when custodial YCA treat-

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in federal prisons. See Federal Prison System, United States Department of Justice, *Facilities 1980*.

[20] In *Dorszynski* v. *United States*, *supra*, the Court unanimously agreed that Congress did not intend YCA treatment for an "incorrigible" youth offender. See 418 U.S. at 439-440 n.13; *id.* at 449 (Marshall, J., concurring). See also S. Rep. No. 1180, *supra*, at 5. An incorrigible offender might, of course, benefit from some aspect of the program, and the benefit might persist until his release.

ment was concluded. Such a requirement is plainly inconsistent with the underlying principles of the Act.

2. The principal basis for the court of appeals' holding that respondent must be given YCA treatment was its concern that respondent's YCA sentence not be "reevaluated" (Pet. App. 6a), "revoked" (Pet. App. 8a), " 'augment[ed] * * * or * * * change[d]' " (Pet. App. 11a, quoting *Thompson* v. *Carlson*, *supra*, 624 F.2d at 426 (dissenting opinion)) by the subsequent adult sentences. Thus, when faced with the fact that respondent's consecutive adult sentences precluded carrying out essential aspects of the YCA commitment, the court attempted, in effect, to reconcile the YCA sentence and the adult sentence by preserving as much of the YCA sentence as it could.

This approach, however, misunderstands both the issue and the role of sentencing courts. Respondent's status as a recipient of both YCA and adult sentences entitles him to a particular form of custody or treatment only to the extent that Congress has provided, expressly or by implication, that that combination of sentences has such a legal effect. It is not enough for respondent to show that the judge who imposed the YCA sentence "intended" that he receive YCA treatment, or that the consecutive adult sentence does not prevent the Bureau of Prisons from continuing YCA treatment until the expiration of his YCA sentence. Even if the judge who imposed respondent's YCA sentence would have determined that respondent's YCA treatment should continue after he committed further offenses and received adult sentences—and there is no reason to treat the original YCA sentence as reflecting such a determination—the conditions of respondent's custody must be determined by the structure of the statute and its underlying purposes, not the intentions of the sentencing judge.

See *United States* v. *Addonizio*, 442 U.S. 178 (1979). The proper reconciliation of the superficially conflicting sentences is the reconciliation most consistent with the premises of the YCA; respondent must show that, given his combination of sentences, requiring continued YCA treatment is compatible with the underlying principles of the Act. For the reasons we have given, respondent can make no such showing.[21]

The court of appeals' error is reflected in its order that respondent receive custodial YCA treatment followed not by a gradual return to society but by adult imprisonment. This is a makeshift variant of a YCA sentence, lacking essential elements; it is a sentence of the court of appeals' own making. No statute prescribes it for any offender, and the Bureau of Prisons, which determines the treatment of both adult and YCA offenders (see pages 31-32, *supra*), has not chosen it. As we have said, it may be less beneficial for an offender who will subsequently begin a term of adult imprisonment than adult treatment would be. In any event, irrespective of which course may benefit offenders more, the Bureau of Prisons has determined that offenders like respondent should be classified as adults, and the underlying principles of the Act do not suggest that Congress required a contrary determination. See *Bell* v. *Wolfish*, 441 U.S. 520, 562 (1979); *Montanye* v. *Haymes*, 427 U.S. 236, 242 (1976).

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[21] In fact, the intent of at least the judge who imposed respondent's first adult sentence was almost certainly to discontinue respondent's YCA treatment at once. As the judgment and commitment orders show, that judge expressly found that respondent "will not benefit *any further* under the provisions of" the YCA (May 15, 1975 Order; emphasis added) and recommended his transfer "from [the] Federal Youth Center at Ashland, [Kentucky,] to a facility providing greater security" (Sept. 2, 1975 Order).

3. Because of its faulty approach, the court of appeals did not give sufficient weight to an additional reason that respondent's initial YCA sentence does not entitle him to continuing YCA treatment. Since he received that sentence, respondent has demonstrated, to the satisfaction of two sentencing judges, that he is not the kind of offender who will profit from YCA treatment. Moreover, these judges made their determinations on the basis of the most compelling evidence—respondent's commission of felonies while he was in YCA custody. Congress intended treatment for young offenders who "show promise of becoming useful citizens" and who "furnish[] the greatest promise of benefiting from rehabilitative treatment" (H.R. Rep. No. 2979, *supra*, at 1; S. Rep. No. 1180, *supra*, at 5). The YCA was intended to prevent recidivism, where possible; respondent, and other YCA offenders who have subsequently received adult sentences, are, in the opinion of the judges who imposed those sentences, adult recidivists.

The judges who made these determinations had information about respondent that was not available to the judge who selected the YCA sentence several years earlier. "An important element of the [YCA] program" is that punishment and treatment be tailored to the characteristics of the particular offender. *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434; H.R. Rep. No. 2979, *supra*, at 5. Decisions about sentencing and conditions of confinement under the Act are to be made in light of all available information about the offender. See S. Rep. No. 1180, *supra*, at 5; *1949 Hearings*, *supra*, at 18; *1943 House Hearings*, *supra*, at 63-64. The Act itself reflects the importance of gathering information about an

offender,[22] and the view that decisions about custody and treatment were to be as fully informed as possible was central to the theory underlying the Act. See *Williams* v. *New York*, 337 U.S. 241, 247-251 (1949). This basic principle of the Act is an additional reason not to require that continuing effect be given to the YCA sentence; it has been superseded by the adult sentences imposed by judges with better information about respondent.

4. Finally, any suggestion that it is somehow unfair to require respondent to continue his YCA term when he will no longer receive YCA treatment misunderstands the purpose of the provision of the YCA under which respondent was sentenced.

As we have explained, no statute entitles respondent to the custodial portion of YCA treatment unaccompanied by a gradual return to society. Such a truncated version of the treatment program Congress designed is likely to be pointless, may well be detrimental to rehabilitation, and in any event is not prescribed by any act of Congress for any class of offenders. In a sense, therefore, it has become impossible to provide respondent with the program of YCA treatment that Congress envisioned. Because respondent committed crimes that led to his consecutive adult sentences, all he can be afforded is the custodial phase of YCA treatment in isolation. Neither Congress nor

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[22] Thus the Act provides that if a sentencing judge needs additional information about whether a young offender would benefit from treatment, he may order the offender committed for observation, study, and a report (18 U.S.C. 5010(e)). It also provides for classification centers to give the Director of the Bureau of Prisons a comprehensive report on each committed youth offender (18 U.S.C. 5014). The Director makes his decision about the proper treatment of the offender on the basis of this report (see 18 U.S.C. 5015).

the Bureau of Prisons has judged this to be a proper rehabilitative procedure. But the fact that respondent, by his own acts, has made YCA treatment of the sort Congress envisioned impossible does not mean that it is unfair or improper to require him to serve the remainder of his YCA sentence.

Respondent received his 10 year YCA sentence under 18 U.S.C. 5010(c). A sentencing judge may proceed under Section 5010(c) only if the offender has been convicted of a crime or crimes punishable by an adult sentence of more than six years' imprisonment; in such cases, Section 5010(c) authorizes the judge to impose a YCA sentence of more than six years, provided it is not in excess of the adult maximum.

The legislative history demonstrates that even if it becomes impossible to continue rehabilitative treatment of an offender serving a sentence under Section 5010(c), the offender should continue to serve that sentence. Section 5010(c) was designed to allow a judge to ensure that an offender would be kept in custody for a certain period even if rehabilitation failed. The House report accompanying the YCA explained that Section 5010(c) was to be used when "the sentencing judge entertains doubt as to whether rehabilitation can be accomplished within 4 years * * *." It then added: "This affords opportunity for the sentencing court to avail itself of the provisions of this bill and at the same time insure protection of the public if efforts at rehabilitation fail." H.R. Rep. No. 2979, *supra*, at 4. The chairman of the Judicial Conference committee that drafted the Act offered the same explanation at Senate hearings. *1949 Hearings*, *supra*, at 62 (statement of Judge Phillips). Another member of the committee, in giving an explanation of the

draft YCA "[for] the record," explained that Section 5010(c) was to be used "if the judge feels that a youth offender convicted of an offense calling for a long term under existing statutes might not respond to treatment within 6 years or that so short a term might have an adverse effect on enforcement of the law * * *." *1949 Hearings, supra*, at 12, 13 (statement of Judge Laws).[23] He elaborated (*id.* at 15-18):

> If a judge * * * has misgivings about the offender, and he thinks 4 years will not be enough for his imprisonment * * * he will not simply say, "I turn you over to the Attorney General for attention as a youth offender"; what he would do, then, would be that he would stipulate the time in addition to the 4 years that he feels the offender ought to serve * * *.

Only this understanding of Section 5010(c)—that it is intended to retain an offender in custody even if rehabilitation fails or becomes impossible—can make that provision consistent with the premises underlying the YCA. For example, there is no other apparent explanation for permitting judges to impose a YCA sentence that continues until an offender is an adult in his late twenties or thirties—or even longer (see, *e.g.*, *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107, 109 (3d Cir. 1978) (20-year YCA sentence))[24]—when younger offenders were, in Con-

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[23] A representative of the America Law Institute explained the analogous provision of the Institute's model youth corrections act (see page 43 note 25, *infra*) in the same way: "The purpose of this [provision] is to protect the public against that small percentage of mentally abnormal killers, aggressive sexual deviates, and so on, who are recognizably dangerous, so long as they remain dangerous." *1943 House Hearings, supra*, at 46.

[24] The Bureau of Prisons advises us that as of June 30, 1981, there were 152 YCA offenders serving sentences of 10

gress's view, the proper objects of rehabilitative treatment. " '[P]risoners under the age of 24 * * * [are] the most difficult to handle but at the same time furnish[] the greatest promise of benefiting from rehabilitative treatment.' " S. Rep. No. 1180, *supra*, at 5, quoting Dept. of Justice report of Oct. 6, 1949; see *id.* at 6; H.R. Rep. No. 2979, *supra*, at 2, 3; *Judicial Conference Report*, *supra*, at 32. Like the Borstal system, YCA rehabilitation was designed to deal with the "special causations[] which occur in the period between adolescence and manhood" (*ibid.*), "the causes which contribute to antisocial conduct * * * in the period between adolescence and maturity [and] disappear when the youth reaches full maturity" (H.R. Rep. No. 2979, *supra*, at 3). YCA treatment was intended to take advantage of the "physical, psychological, and social characteristics of youth which distinguish them from both children and adults." *Judicial Conference Report*, *supra*, at 37; see S. Rep. No. 1180, *supra*, at 4.

Similarly, the Borstal system emphasized relatively short periods of confinement and extensive contacts with the outside world. See H.R. Rep. No. 2979, *supra*, at 5-6; S. Rep. No. 1180, *supra*, at 4. As Section 5010(b) shows, Congress considered a six-year YCA sentence, with conditional release required after no more than four years, appropriate for rehabilitative treatment.[25] It is unlikely that Congress

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to 15 years, 20 serving sentences of 15 to 20 years, and eight serving sentences longer than 20 years.

[25] Offenders remained subject to the Borstal system for no more than four years, of which no more than three years were to be spent in custody. *Judicial Conference Report*, *supra*, at 56. The draft of the YCA proposed by the Judicial Conference provided only for what is now a Section 5010(b) sentence; there was no provision comparable to Section 5010(c). See *Judicial Conference Report*, *supra*, at 17,

believed YCA treatment would ordinarily rehabilitate an offender who entered an institution in his teens and was not released until 10 or 15 years later; yet Section 5010(c) authorizes such sentences. This confirms that when Congress authorized sentences that continued YCA offenders in custody for long periods concluding well beyond their youth, it intended those sentences to serve other objectives besides rehabilitation and treatment—objectives such as "protect[ing] the public" (H.R. Rep. No. 2979, *supra*, at 4) and avoiding "an adverse effect on enforcement of the law" (*1949 Hearings*, *supra*, at 13). Therefore, when rehabilitation fails—or when, as here, rehabilitative treatment of the form Congress intended under the YCA becomes impossible—it is still proper to continue an offender in custody in order to serve those objectives.

Respondent's two adult sentences are the best possible evidence that efforts to rehabilitate him have failed. See D.C. Code Ann. § 22-3202(d)(1) (1973) (offender who commits two or more violent crimes with dangerous weapons is ineligible for YCA sentence). Moreover, as we have explained, respondent has made further YCA rehabilitative treatment impossible. This is the kind of circumstance in which Congress intended that, to ensure protection of the public, an offender must serve his entire sentence under Section 5010(c). In addition, since rehabilitative treatment is not the only purpose of a Section 5010(c) sentence, respondent, unlike the persons who challenged their custody in such cases as *O'Connor* v. *Donaldson*, 422

18-19. Another model youth corrections act, drafted by the American Law Institute, provided for a five-year term of custody that could be renewed any number of times by applying to the court. *1943 House Hearings*, *supra*, at 46.

U.S. 563, 574-575 (1975); *McNeil* v. *Director, Patuxent Institution*, 407 U.S. 245, 250 (1972); and *Jackson* v. *Indiana*, 406 U.S. 715 (1972), cannot claim that continued custody under his YCA sentence is improper because that sentence no longer serves any purpose.[26]

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[26] We recognize that many of these arguments would not apply with equal force if this case involved an offender sentenced under 18 U.S.C. 5010(b) for a crime carrying a maximum adult sentence of less than six years' imprisonment. For such an offender, rehabilitative treatment is "in a sense * * * the *quid pro quo* for a longer confinement but under different conditions and terms * * *" (*Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962) (Burger, J.)).

But the question of how to proceed when such an offender is sentenced to a consecutive term of imprisonment as an adult is not presented by this case, and it should not be decided by the Court at this time. See *Thompson* v. *Carlson*, *supra*, 624 F.2d at 422 n.9 (leaving this question open). The decision whether to release such an offender from his YCA sentence to his adult term rests with the Parole Commission. See 18 U.S.C. 5017(a); 18 U.S.C. 4206. The Commission establishes a date on which the offender will be released from custody entirely; the date of his release from the YCA sentence to the adult sentence is adjusted to comply with statutory requirements. See United States Parole Commission, United States Department of Justice, *Procedures Manual* 61-62 (Mar. 1, 1981). Under Parole Commission guidelines, the date of the offender's release would be determined in large part by the severity of his offenses, including the offense for which he received the YCA sentence. See 18 U.S.C. 4206(a); 28 C.F.R. 2.18-2.20. Thus, other things equal, an offender serving a sentence under Section 5010(b) for a more minor offense will be released earlier.

Under these circumstances, it is possible that no offender who receives a consecutive term of imprisonment as an adult while serving a sentence under 18 U.S.C. 5010(b) will be able to make any colorable claim that unless given YCA treatment, he is entitled to an earlier release. In any event, since the

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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arguments that would be relied on by an offender in that situation are not available to respondent, they have no bearing on the proper disposition of this case.

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